THE DECALOGUE JOURNAL

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Due Process—

The requirement of "due process" is not a fair-weather or timid assurance. It must be respected in periods of calm and in times of trouble; it protects aliens as well as citizens. But "due process", unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, "due process" cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, "due process" is compounded of history, reasons, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess. "Due process" is not a mechanical instrument. It is not a yardstick. It is a process. It is a very delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process.

U. S. Supreme Court Justice

Felix Frankfurter *

* 71 S. Ct. 624 at 643

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IN THIS ISSUE

LAWYERS HEAR McGRATH

By ELMER GERTZ

United States Attorney General, J. Howard McGrath spearheaded the Lawyer's Division Combined Jewish Appeal Drive, at a dinner June 21, at the Palmer House. Judge Julius H. Miner presided. Reuben L. Freeman is chairman of the Lawyer's Division.

The Attorney General made a moving address on the great need of aid for Jewry driven from the Middle East and other parts of the world to seek refuge in Israel, and the constantly mounting necessity for help for the builders of the youngest republic in the world.

Two hundred members of the Bar and Bench attended the dinner. The sum of $305,000 was pledged at the affair. Since, this total has been increased to $335,000 contributed in Chicago by lawyers of Jewish faith.

Considerable concern over the success of the Lawyer's Division Drive has been voiced by the workers active in the campaign. It is cited that out of almost 3,000 Jewish lawyers in this city only 1200 made contributions.

Members of The Decalogue Society of Lawyers active in the Drive are: Judge Julius H. Hoffman, Master in Chancery, Henry L. Burman, Carl B. Sussman, Samuel Allen, Hyman Abrams and Harry D. Cohen. Several of our members are currently canvassing downtown buildings to help achieve the Lawyer's Division goal. Member Judge Harry M. Fisher is Vice-Chairman of the Trades and Profession Division which is headed by member Morris Alexander.

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Ill.

Archie H. Cohen – New President

Impressive ceremonies, June 22, 1951, at a luncheon meeting at the Covenant Club, marked the installation into office of our new President Archie H. Cohen; the officers of The Decalogue Society of Lawyers for 1951-52 and our Board of Managers. Judge Harry M. Fisher of the Circuit Court was the installing officer. The principal address on the occasion was delivered by Judge William F. Waugh of the Probate Court of Cook County. Past President Benjamin Weintroub made the presentation of a gift to the retiring President Carl B. Sussman. Hundreds of members of our Society, their wives and friends came to witness the proceedings and wish a successful administration to Cohen. Judge Waugh in congratulating our Society upon its happy choice in selecting Cohen as our President emphasized his fitness for the office by citing his rich background of public and professional services, to wit:

LL.B, John Marshall Law School. Admitted to the Illinois bar, 1915, and began practice in Chicago; associated at various periods with James Hamilton Lewis, Richard S. Folsom, Wallace Streeter, Charles M. Haft, Maj. George R. Harbaugh; professor of law, Loyola University 1927-33; Master in Chancery Circuit Court of Cook County, Illinois, 1927-33; Referee in Bankruptcy U. S. District Court, Eastern Division Northern District of Illinois, 1934-44. Member of the Board of Directors, Young Men's Jewish Council for Boys; member of Board of Directors, Jewish Charities of Chicago. Member, American Illinois State and Chicago bar associations. National Americanism Commission, vocational service bureau of B'nai B'rith. Elk, past exalted ruler honorary life member, Chicago lodge 4. Member, Covenant Club of Illinois.

Mr. Cohen's Response:

I feel confident that you share my belief when I say that lawyers are concerned with the value of a good reputation. They know how quickly and oft-times unfairly it can be damaged by careless methods of speech as well as by falsehood and slander. When a good name is needlessly and thoughtlessly ruined by criticism born of a great zeal for the public good but which fails to distinguish between honest mistakes and evil conduct, irreparable harm is done. Most lawyers hold fast to the belief that no man can be a good lawyer who is not also a good man, and that no man is a great

Archie H. Cohen

lawyer who is not also great in the virtue of his manhood. I do not admire or respect a slick and cunning lawyer, and I like to believe that his day is passing. Upon lawyers in private practice and public life there rests the responsibility of so discharging their professional duties as to merit respect for the law and its processes.

The legal profession must be realistic when seeking to improve public relations. This purpose can be accomplished only if every member of our profession manifests a greater interest in the common good of fellow lawyers. No one can gainsay the fact that the confidence and respect of the public for the individual lawyer or local groups of lawyers is largely influenced by the impression of the general public as to the lawyers in general. Society has granted us special honors and special privileges. These honors and privileges carry with them responsibilities. The only effective way of assuming and carrying out such responsibilities is by being a member of The Decalogue Society of Lawyers or the local, or state or national Bar Associations. By such membership the individual action of the lawyer can be combined with all lawyers of such groups and produce an effective medium for good. Our profession must

be alert to changing times. We can best meet the challenge of these changes as a group and not as individuals.

Times have changed! Today we must reinforce the faith of our people in the American way of life. We are faced with the greatest competitive battle that we have ever had. It is a battle between those who believe in the American way of life and those who would destroy it. Lawyers are accustomed to combat —we know how to fight and win against competition. We must, however, guard against being lulled into a false sense of security—we must realize the necessity of joining in the fight. As leaders in our communities we must speak and act in accordance with our honest beliefs and uphold the American concept of government and philosophy of law. Our duty is clear to protect the precious heritage of freedom and preserve equal justice under the law.

I hold that no person is worthy of the opportunities and privileges afforded by American citizenship, unless he or she is willing to assume his or her obligations with respect to preserving American ideals and American Institutions.

In America we subscribe to the force of an idea and not the idea of force. Our Government has urged upon the leaders and rulers of other nations that the rights of individuals be respected regardless of their race, creed or color. I believe the Golden Rule, the Sermon on the Mount, and the Ten Commandments are still the guide for decent living. Let us reaffirm our faith in our form of Government, in our fellowmen and in Almighty God.

I should like to emphasize the fact that among other projects I have in mind for the welfare of our Society, I have given a great deal of thought to expanding the program of our committee on legal education which has been so ably headed by Harry A. Iseberg, our First Vice President, and which, I recommend, be hereafter known as the Committee on Professional Education. I would like to suggest a series of lectures dealing with the following subjects:

1. Decedent's Estates.
2. Current problems in labor law.
3. Current problems in taxation.
4. Problems of general practice.
5. Problems of Federal legislation and regulation.
6. Trial practice.
7. Law office management.
8. Real Estate law and practice.
9. Bankruptcy practice and procedure.
10. Tax practice and procedure.
11. Negligence.
12. Criminal law and procedure.
13. Appellate procedure.
14. Administrative Agencies.
15. Copyrights, Patents and unfair competition, and such other subjects as may be suggested by the members of our Society.

I am confident that we can procure for these lectures learned judges and lawyers who have a rich background of experience and outstanding ability.

I pledge myself to extend every effort for constant and practical improvement of The Decalogue Society of Lawyers. I shall do my best to translate into action the high purposes of our Society and with the genuine cooperation of my fellow officers, the Board of Managers and our entire membership which I earnestly solicit, I have high hopes that my administration will measure up to your expectations.

LEGISLATIVE PROGRESS

Member Edward P. Saltiel, State Senator Thirty first Senatorial District, secured at the last session of the State Senate, the passage of the Chicago Crime Commission sponsored bill to extend the life of a Cook County Grand Jury. Hence, a Cook County Grand Jury may continue work on matters under consideration for ninety, instead of as heretofore, thirty days only.

Senator Saltiel is also responsible for the passage of a bill which creates a Legislative Committee to study Judicial articles of the Illinois Constitution and for the amending of same.

Senator Saltiel is a veteran of sixteen years of service in the Illinois Legislature.

Protecting Commercial Applications of Art

By ALBERT I. KEGAN and SAMUEL W. KIPNIS

Member Albert I. Kegan is Lecturer on Patents and Copyrights, School of Law, Northwestern University.

Member Samuel W. Kipnis, long a practising Patent Attorney, is a Law Associate of Albert I. Kegan.

The artist who does not want to starve often sells his creations for incorporation into such utilitarian things as table lamps, bookends, etc. The lawyer of course is interested in protecting these creative people from piracy. Adequate protection of artistic works of this kind would encourage artists to work in this field, and thus enrich our homes with articles more artistic and interesting.

This is recognized by the Federal Constitution which specifically authorizes Congress to secure "for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (Art. I, sec. 9). Congress gave effect to this Constitutional mandate by enacting two statutes: The Copyright Act (Title 17 USCA) for the protection of authors; and the Patent Statute (Title 35 USCA) for the protection of inventors, including inventors of ornamental designs for articles of manufacture.

The two laws are administered by independent Governmental agencies, the Copyright Code by the Copyright Office; the Patent Law by the Patent Office.

The Copyright Code provides a simple, expeditious procedure for securing and registering copyrights. No examination as to authorship or originality is made. Indeed statutory copyright springs into being by the act of the author in publishing his work with the proper statutory notice thereon. Thereafter the applicant's claim to copyright may be registered in the Copyright Office. Recovery for infringement of a copyright can be had only upon proof of copying. Independent production is a good defense. But if the copyright owner wins, his recoveries are substantial.

For footnote explanations see page 8.

On the other hand the patent law requires an examination by competent experts as to novelty and inventorship and a patent does not issue until the invention passes these rather rigid tests. No legal patent right exists until the patent is granted. It costs much more to procure a patent than a copyright. To recover for patent infringement, it is not necessary to prove copying. The patentee need only prove that the defendant made, used or sold the patented invention without license from the patentee. It is quicker and easier to copyright than to patent. The plaintiff wins in over 80% of the copyright cases; but loses in over 80% of the patent cases.

Some creations seem capable of being protected under either the copyright code or the patent laws. A three-dimensional work of art is such a creation. As a work of art, it appears to be copyrightable; as a design for an article of manufacture, it appears to be patentable under the design patent provisions of the patent laws. Because of the relatively simple procedure and speedy protection afforded by the copyright law, copyright is the means of protection which lawyers and laymen alike generally prefer in these circumstances. Copyright is the proper means of protection for works of pure art.

But copyright protection is a mirage where the work of art is used to impart the principal commercial value to utilitarian articles, in view of the opinion of the Court of Appeals for the Seventh Circuit in *Stein* v. *Expert Lamp Company*,[1] (Decalogue member, Max Richard Kraus, was attorney for the successful litigant.)

Rena Stein created two statuettes of Balinese dancers which she copyrighted as works of art under Section 5 (g) of the Copyright Code (17 USCA). Thereafter she made and sold her Balinese dancers with lamp sockets attached, for use as desk lamps. The defendant copied slavishly. The trial court held the copyright to be invalid, on the ground that the

author, having put her statuettes to practical use, could protect her work only by way of design patent.[2] The Court of Appeals affirmed.[3]

The Copyright Code extends protection to "works of art; models or designs for works of art," [4] and provides that:

> "Any person entitled thereto, upon complying with the provisions of this Title, shall have the exclusive right:
>
> (a) to print, reprint, publish, copy and vend the copyrighted work." [5]

The Register of Copyrights has defined [6] "works of art" to include "works of artistic craftsmanship insofar as their form, but not their mechanical or utilitarian aspects, are concerned," expressly including "artistic jewelry, enamels, glassware and tapestries, as well as all works belonging to the fine arts, such as paintings, drawings and sculptures."

The Design Patent Statute extends protection to ornamental designs for articles of manufacture, provided the creation of the ornamental effect amounts to an act of psychological invention over all designs previously known.[7] As sculptures, Rena Stein's dancers are entirely lacking in functional use. Their value is solely for contemplation. Had she not made them up into lamp bases, there is little doubt but that the copyright would have been held valid. The fact that the defendant converted the pirated art into utilitarian lamp bases was not what saved the defendant.[8] The copyrights were held invalid because the artist plaintiff manufactured and sold her creations only as lamp bases, from which the court inferred that the statuettes actually had been conceived for use as the supporting parts of functioning electrical apparatus, and not merely and solely as objects of contemplation. They therefore could be protected, if at all, only by design patent.

The United States patent and copyright statutes do not contain any statement that they are mutually exclusive. The design patent statute purports to offer protection to every newly invented ornamental design for an "article of manufacture," and certainly a sculpture which is reproduced in copies is an "article of manufacture." And just as certainly, sculptures reproduced in copies are offered protection by express enumeration in the copyright statute. The British Copyright Act,[9] by way of comparison, provides in terms that it does not extend protection to designs capable of being registered under the Patents and Designs Act, 1907, but that designs which are capable of being registered under the patent law can nevertheless be copyrighted, if they are not used or *intended* to be used as models or patterns to be multiplied by any industrial process. In *Pytam Ltd.* v. *Models* (Leicester), Ltd.,[10] the British court held that a sculpture is protectible by copyright "if it is a design which is 'not used or intended to be used as a model or pattern to be multiplied by any industrial process.'"

Under the copyright laws of the United States, statutory copyright comes into being upon the fiat of the copyright proprietor, expressed by affixing the statutory copyright notice to each copy of the copyrighted work.[11] There is no requirement of inventiveness or genius: if the work originated with the author (i.e., was not copied), it is copyrightable to him, even though *identical* works are in existence. The copyright monopolizes only the *form of expression* which the author uses to communicate his ideas or emotional reactions; it does not monopolize the ideas or emotional reactions themselves. The maximum term of the monopoly is 56 years.

A design patent likewise monopolizes only the ornamental appearance of the patented article. In contrast with the copyright law, however, the design patent law withholds protection unless the new design is so different from everything known before that it required an act of psychological invention to create it.[12] The patent law charges every inventor with complete knowledge of everything in existence relevant to his invention;[13] the copyright law holds the author only for what is actually known to him.[14] The maximum term of the design patent monopoly is only 14 years. Copyright protection begins the moment the copyright proprietor affixes the copyright notice to his work, which affixation *precedes* filing the application for copyright registration. Design patent protection does not begin until the patent issues, which is usually more than a year after the patent application is filed.

The *Stein* opinion points out that applications

for registration of copyright are not examined on the merits by the Copyright Office; whereas applications for design patent are so examined by the Patent Office.[15] The difference, however, is only one of forum, since every contention against the copyright may be raised in court.

The real issue is one of public policy, stated by the Court of Appeals for the Seventh Circuit in *Taylor Instrument Cos.* v. *Fawley-Brost Co.*[16] The Court held that two-dimensional paper charts printed in ink the same as books and other conventional "writings" nevertheless were not copyrightable, because they were intended to be used in recording machines, and were not bought merely to be contemplated for the sake of any information which might be conveyed by the printed matter on them. The *Taylor Instrument* case supports our observation that courts are reluctant to recognize monopolies in things which people use,—such as hammers, mechanical supports, or blank business forms; but that they are quite willing to sustain monopolies in the choice of words or form of expression which constitute the value of things which people use passively, by visual or aural contemplation,—such as books, motion pictures, music or sculpture.

The *Taylor Instrument* opinion also underscores the reluctance of the courts to uphold a 56 year monopoly by copyright upon subject matter which could not meet the tests for even a 3½ year monopoly under the design patent law.[17]

These attitudes, it seems, caused the Court in the *Taylor Instrument* case to write into our copyright and patent laws the rule of mutual exclusion which appears in the British law by express Act of Parliament. The *Stein* opinion is an obvious corollary of the rule of *Taylor Instrument Cos.* v. *Fawley-Brost Co.*[18]

It is well settled, under both United States[19] and British[20] law, that an unpatented article may not be monopolized by copyrighting a drawing or photograph thereof. Nevertheless, three dimensional reproduction of a copyrighted work is copyright infringement, regardless whether the infringing objects are utilitarian in character. Thus the manufacture and sale of dolls, tombstones and statuary have been enjoined, where the same incorporated the visual characteristics shown in the copyrighted work of "pure art."[21]

The problem really is one of classification. In the *Stein* case, the court applied a teleological rule of classification: if the article of manufacture is to be contemplated, and nothing more, it is copyrigthable; if it is to be manipulated or used to manipulate or support other objects, it can be monopolized only by patent. The Court then decided what the statuettes in suit were for, by ascertaining what the author did with them. In most cases, it should be possible to classify the article by examining the article itself, without recourse to the intent or commercial practice of its creator.

Conclusion

What Rena Stein tried to protect by copyright was the aesthetic effect which her Balinese dancers conveyed to those who contemplated them. She did not try to monopolize the mechanical capacity for supporting a lamp socket which was inherent in the ceramic which she shaped to express her artistic ideas. Upholding her copyright would not have prevented anyone from making lamp bases. It would only have prevented the defendant from pirating the added commercial value which her artistic work had imparted to the lamp bases in suit.

One solution to the problem of protecting artists in the fruits of their creative endeavors would be to amend the copyright statute to expressly provide that the incorporation of the copyrighted work of art into utilitarian wares shall neither void the copyright nor exonerate the infringer.

A second possible solution would be to repeal the design patent laws, and amend the copyright law to expressly provide copyright protection for artistic effort applied to the ornamentation of utilitarian wares.

A third solution would be to amend the design patent law to eliminate the judge-imposed requirements of psychological invention over the prior art, so that any new ornamental design would be patentable. To make this proposal work, it would be necessary to implement such amendment of the design patent laws by administrative changes in the Patent

Office sufficient to cause design patents to issue two or three months after filing, since the commercial life of new designs is relatively short.

The application of this proposal to design patents would not affect the national economy to anywhere near the extent of the proposals to similarly amend the utility patent statutes.

In any event, mitigation of circumstances like those revealed by the *Stein* case rests with Congress.

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[1] Docket No. 10,347, 7-C.A., 188 F. (2d) 611.

[2] Stein v. Expert Lamp Company, 88 U.S.P.Q. 305.

[3] Stein v. Expert Lamp Company (7-C.A., 1951) Docket No. 10,347, 188 F. (2d) 611.

[4] 17 U.S.C.A., Sec. 5(g).

[5] 17 U.S.C.A., Sec. 1(a).

[6] Acting under the authority of 17 U.S.C.A., Sec. 207.

[7] Gorham v. White, 81 U.S. 511, 524 (1871).

[8] Pelligrini v. Allegrini, 2 F(2d) 610.

[9] Copyright Act of 1911, Sec. 22(1). Cf. Kopinger & James, *Law of Copyright*, (1948).

[10] 1 Ch. 639 (1930).

[11] 17 U.S.C.A., Secs. 10, 11.

[12] Associated Plastics v. Gits, C.A. 7, 182 F(2d) 1000, 1003.

[13] Mast, Foos v. Stover, 177 U. S. 485.

[14] DuPuy v. Post Telegram Co., 210 Fed. 883.

[15] Cf. Associated Plastics v. Gits, C.A. 7, 182 F(2d) 1000, 1003.

[16] 139 F(2d) 98, (C.A. 7 1943); cert. den., 321 U. S. 785.

[17] Design patents are issued for 3½, 7 or 14 years, at the option of the applicant. 35 U.S.C.A., Sec. 77.

[18] 139 F(2d) 98 (C.A. 7, 1943).

[19] Lamb v. Grand Rapids Mich. Furn. Co., 39 F. 474 (CC. Mich. 1889) (furniture); National Cloak and Suit Co. v. Standard Mail Order Co., 191 F. 528 (SDNY 1911) (garments); Jack Adelman v. Sonners and Gordon, 21 U.S.P.Q. 218 (S.D.N.Y. 1934) (dress); Baker v. Selden, 101 U.S. 99 (system of bookkeeping); Mueller v. Triborough Bridge Authority, 43 F. Supp. 298 (bridge); Kemp & Beatley, Inc. v. Hirsch & Berquist, 34 F. (2d) 291 (dress patterns); Seip v. Comm. Plastic, 85 Fed. Supp. 741 (D. Mass.) (drawings of a toy).

[20] Hanfstaengl v. Empire Palace, (1894) 2 Ch. 1.

[21] King Feature Syndicate v. Fleicher Studios, 299 F. 533, CA 2, (doll held to infringe copyrighted cartoon); Fleicher Studios v. Freundlich, 73 F. (2d) 276, (doll held to infringe copyrighted cartoon); Jones Bros. Co. v. Underkoffler, et al., 16 F. Supp. 729 (tombstone held to infringe copyrighted photograph); U. S. v. Backer, 134 F. (2d) 533 (figurine held to infringe copyright on figurine); Bracken v. Rosenthal, 151 Fed. 136 (statuary held to infringe copyright on statuary); Pelligrini v. Allegrini, 2 F. (2d) 610 (statuary held to infringe copyright on statuary sold as religious shrine); Schumacher v. Schwenke, 25 F. 466, 467 (cigar box label held to infringe copyrighted painting); Gerlach Barlow Co. v. Morris Bendien, Inc., 23 F. (2d) 159 (calendar held to infringe copyrighted painting); Bleistein v. Donaldson Co., 188 U.S. 239 (circus poster held to infringe copyrighted circus poster); *British Law*: King Features v. Kleeman Ltd. (1931) (A.C. 417) (dolls and toys held to infringe copyrighted cartoon).

President Appoints Society Committee Leaders

President Archie H. Cohen announced the appointment of chairmen of several of our important committees:

COMMITTEES	CHAIRMEN
City and State Legislation	Benjamin M. Becker and Marshall Korshak
Constitution and By-laws	Maxwell N. Andalman
Appointment Book and Directory	Oscar M. Nudelman
Ethics and Inquiry	Samuel Allen
Federal Legislation	Harry G. Fins
Forum	Bernard H. Sokol
Foundation Fund	Nathan Schwartz
House and Library	Reuben S. Flacks
Civic Affairs	Elmer Gertz
Professional Education	Harry A. Iseberg
Insurance	L. Louis Karton
Membership Conservation	Harry D. Cohen
Planning, Organization, Social Agencies and Welfare	Jack E. Dwork
Younger Members Activities	Harold Nudelman
Placement & Employment	Michael Levin
Membership	Bernard Epton, Joseph Solon, Seymour Velk — Co-chairmen

In naming his selections Cohen urged the interest of the entire membership and its participation in the work of the committees. Members interested in taking part in the work of any committee should contact its chairman or the President.

Notice Requirements in Personal Injury Claims vs. the Chicago Transit Authority and City of Chicago

By SAMUEL J. BASKIN

Member Samuel J. Baskin is a Vice-President of the Covenant Club of Illinois.

The Statute requiring that written notice be filed in personal injury claims against the Chicago Transit Authority has created so many pitfalls and technical requirements that an analysis of the law interpreting this section of the Metropolitan Transit Authority Act should be of definite aid to the lawyer who is a comparative neophyte in this field of practice. The idea in the minds of many attorneys that actual knowledge by the C.T.A. of all the required data in the Notice is a compliance with the Act is a fatal misconception of the law. And when the mistake is discovered after the six-month time limitation has expired, the attorney for the claimant is severely jolted as he realizes that the era when justice will be done—that a meritorious claimant is entitled to his day in court, in spite of some technical oversight—has not yet arrived.

Chapter III 2/3 Sec. 341—1947 Ill. Revised Statutes Limitation of Actions Against Authority, Notice of Injuries—Sec. 41.

No civil action shall be commenced in any court against the Authority by any person for any injury to his person unless it is commenced within one year from the date that the injury was received or the cause of action accrued. Within six (6) months from the date that such an injury was received or such cause of action accrued, any person who is about to commence any civil action in any court against the Authority for damages on account of any injury to his person shall file in the office of the secretary of the Board and also in the office of the General Attorney for the Authority either by himself, his agent, or attorney, a statement, in writing, signed by himself, his agent or attorney, giving the name of the person to whom the cause of action has accrued, the name and residence of the person injured, the date and about the hour of the accident, the place or location where the accident occurred, and the name and address of the attending physician, if any. If the notice provided for by this section is not filed as provided, any such civil action commenced against the Authority shall be dismissed and the person to whom any such cause of action accrued for any personal injury shall be forever barred from further suing.

In the case of People v. C.T.A., 392 Ill. 77, our Supreme Court unequivocally held that the Transit Authority Act is constitutional and that it validly creates a public municipal corporation. Consequently, the authorities construing paragraphs 7 and 8, Chap. 70, Ill. Revised Statutes, 1939, requiring a Notice of injuries in suits against the City would be applicable. That Act reads:

Sec. 1-10. Personal Actions Against Municipalities to Be Commenced Within One Year.

No civil action shall be commenced in any court against any municipality by any person for any injury to his person unless it is commenced within one year from the date that the injury was received or the cause of action accrued.

Sec. 1-11. Notice Within Six Months.

Within six months from the date that such an injury was received or such a cause of action accrued, any person who is about to commence any civil action in any court against any municipality for damages on account of any injury to his person shall file in the office of the city attorney, if there is a city attorney, and also in the office of the municipal clerk, either by himself, his agent or attorney, giving the name of the person to whom the cause of action has accrued, the name and residence of the person injured, the date and about the hour of the accident, the place or location where the accident occurred, and the name and address of the attending physician, if any.

Sec. 1-12. Dismissal of Suit If No Notice Filed.

If the notice provided for by section 1-11 is not filed as provided in that section, any such civil action commenced against any municipality shall be dismissed and the personal injury shall be forever barred from further suing.

An analysis of the Statute points to the following compulsory requisites. In the case of Reichert v. City of Chicago, 169 Ill. App. 493, five essential elements are emphasized as necessary to constitute a valid notice:

(1) The name of the person to whom such cause of action has accrued.
(2) Name and residence of the person injured.
(3) Date and about the hour of the accident.
(4) Place or location where such accident occurred.
(5) Name and address of the attending physician, if any.

To this I would add the 6th and 7th requirements.

(6) Signature by claimant, his agent or attorney. And of course we must add the vital prerequisites—
(7) That it be filed in the two offices specified in the Act within six months from the date that the injury was received or the cause of action accrued.

The importance of each of these requirements is made apparent by a study of the authorities that have interpreted each of the specified essential elements.

On the first two requirements, in the case of Swenson v. City of Aurora, 196 Ill. App. 83, the court held

"The omission of the place of residence is clearly fatal to the validity of the notice. And it is clear that this defect cannot be cured by the showing that he resided at some other place than the one mentioned in the notice that renders the notice invalid."

However, some degree of latitude in respect to this requirement is expressed in the cases of Tannert v. City of Chicago, 308 Ill. App. 327, and Welch v. City of Chicago, 236 Ill. App. 520. The Tannert case, supra, takes cognizance of the substantial compliance theory where a street address which did not exist was inadvertently specified in the Notice. This substantial compliance doctrine, which will be considered later in this article, was applied to the address requirement in the case of Fromme v. City of Girard, 295 Ill. App. 144, where the only designation of the claimant's address was "Girard, Ill.; near Village Limits."

The third requirement of the "date and about the hour of the accident" was strictly construed in favor of the City in Swenson v. City of Aurora, 196 Ill. App. 83, where the notice specified the time of the accident as 5:30 P.M., and the proof showed the correct time to be 8:30 P.M. The court said, "So far as the practical effect is concerned, the city is in no better position than if no hour had been stated, and a failure to state the hour of the accident renders the notice fatally defective."

In Quimette v. City, 242 Ill. 501, the notice stated that the accident occurred on Nov. 10, instead of Oct. 10, the correct date. The Court held the notice insufficient and said,

> "The question of the notice is entirely within legislative control. The legislature may prescribe the conditions under which cities shall be held liable to persons injured while using the streets and sidewalks—the statute requires the date to be set out in the notice and this certainly cannot be done by stating that the accident occurred on a date on which it did not occur."

The fourth essential element, "Place or location where such accident occurred," is strictly construed against the claimant in Keller v. Tomaska & City, 299 Ill. App. 34, where a notice was held defective when it gave the place of the accident at a point almost a quarter of a mile from where the accident actually occurred. The court quoted the language of earlier cases that—

> "Both upon authority and upon principle, we think it clear that the sufficiency of the notice required by the city is a question of law for the court and that its sufficiency must be determined from the notice itself.—It is not sufficient that the plaintiff allege and prove the service of some kind of a notice, but it must be of such a notice as the statute requires."

The place of accident must be "identified from the notice itself."

However, particularly in the interpretation of this requirement, the courts, in recent years, have provided relief to a claimant where there has been substantial compliance. In the leading "substantial compliance" authority, McComb v. City of Chicago, 263 Ill. 510, a notice was held valid where the place was designated only as "39th St. and Campbell Ave." without specifying which corner. The notice was also held sufficient with similar descriptions of location in the cases of Reule v. City of Chicago, 268 Ill. App. 266 (at or near to the corner of Ashland Ave. and Irving Pk. Blvd.), and in Bryant v. City of Chicago, 319 Ill. App. 524 (on 44th Place at or near St. Lawrence Ave.).

The fifth requirement, "Name and address of the attending physician, if any," has been clarified to require only the name and address of the attending physician at the time the notice was served, Cole v. City of East St. Louis, 158 Ill. App. 494. And in the case of Schmidt v. City of Chicago, 284 Ill. App. 570, the court once again utilized the substantial compliance theory, in validating a notice where the proof showed that the physician, well known in the city, lived across the street from the address designated in the Notice.

The sixth requisite, "Signature by claimant, his agent or attorney," becomes an important "must" in view of the Supreme Court case of Minnis v. Friend, 360 Ill. 328.

> The plaintiff recovered a $15,000 judgment, in the circuit court against the City of Chicago for injuries he received when he was struck by a city truck. The notice filed with the City was not signed by anyone. On pg. 333, the Court said, "No reason appears to us why the plain terms of the statute should not be followed—Since the legislature has made the giving of this statutory notice a condition precedent to liability, a notice which does not contain one of the essentials prescribed therein is not a compliance with the statute."

At this point, an analysis of the theory of "substantial compliance" seems to be appropriate. As evidence that the ends of justice are not entirely overlooked, it is important to review a number of cases to which the lawyer can turn for possible relief when he finds, on the day of the trial, long after the six months have expired, that through a stenographic error or an oversight, an address, a date, or a signature is incorrect. To come to the aid of the distraught lawyer in just such a crisis, the language of the court in the case of McComb v. City, 263 Ill. 510, where the Notice failed to specify the exact corner where the accident occurred, is particularly encouraging. In quoting with favor from the case of Ellis v. City of Seattle, 92 Pac. Rep. 431, our Supreme Court says,

> "It was not intended that the terms of the notice should be used as a stumbling block or pitfall to prevent recovery by meritorious claimants."

On pg. 512, the Court expresses the following opinion which can be so helpful in a practical application of this substantial compliance doctrine.

> "It must be admitted that in this respect the notice was crudely and carelessly prepared, but if, considering the whole notice together, it gives sufficient information to the city authorities to enable them, by the exercise of reasonable intelligence and diligence, to locate the place of the injury and ascertain the conditions alleged to have existed which caused it, it is sufficient, according to the weight of authorities, to serve the purpose for which it was required by the statute to be given."

In fact, even the Minnis v. Friend, supra, case that held the failure to sign the Notice was fatal, quotes with approval, from the McComb case. On pg. 332-333, the Court says:

> "We said that the purpose of the statute was to enable the city authorities, by the exercise of reasonable intelligence and diligence, to locate the place of the injury and ascertain the conditions alleged to have existed which caused the injury, and that no particular form of notice is required by the statute. What we said necessarily had reference only to the facts of that case. There had been an attempt to comply with the statute, and our holding was that location had been given which was sufficienly definite to comply with the

statute. *The McComb case would be applicable if there had been some attempt to comply with the requirement of the Statute that the notice be signed and if the question were as to the sufficiency of the signature.*"

In the case of Schmidt v. City of Chicago, 284 Ill. App. 570, where an incorrect address of the physician in the Notice was involved, the Court quotes, with approval from the case of Revle. v. City, 268 Ill. App. 266 stating, "It was not intended that such a Notice should serve to entrap the plaintiff who had a meritorious cause of action if it was sufficiently definite."

On page 585 the Court says:

"In all jurisdictions where similar statutes as to the notice to municipalities of claims on account of personal injuries are in force, they have uniformly been construed liberally, and substantial compliance has been held sufficient."

The Court goes on to say:

"We think the officers and investigators of the City of Chicago, being men of common intelligence and understanding, could have by the exercise of reasonable diligence and without further information from plaintiff ascertained the doctor's correct address, and this being so, the notice was sufficient in that it fully answered the purpose of the statute."

The case of Lutsch v. City of Chicago, 318 Ill. App. 156 is especially significant in that the Court expressly enunciates a rule of liberal construction of the statute. In that case (appealed by the author of this article), all the requisites were fully complied with, except that the Notice filed with the City Attorney was not signed. The Notice served on the City Clerk and the original Notice, retained by the attorney, were signed. A serious question of the validity of the notice existed in view of the Minnis v. Friend, supra, decision. However, on pg. 158, the Court said,

"The section is in derogation of the common law rights of injured persons and should be construed strictly against the city, although an early Illinois case held that strict compliance with the statute was necessary, but later cases (Schmidt v. City of Chicago, 284 Ill. App. 570; McComb v. City of Chicago, 263 Ill. 510) inferentially approve a decision of a foreign jurisdiction holding that such statutes should be liberally construed."

In passing on the Notice, the Court said, "Is not the purpose accomplished when a complete signed Notice is filed with the Clerk and the City's counsel sees and receipts a complete signed Notice and is given an unsigned copy?—We are disposed to give the section a liberal meaning within the limits established in the Minnis case."

If a generalization can be made on the basis of these authorities, the following can be stated. If an address, a date, or the other required data is entirely omitted, then the omission is fatal. But if an attempt at compliance is made on the essential element, and it is *substantially* correct, or amounts to substantial compliance, then the Courts would be justified in validating the Notice. In this consideration, the Courts will go beyond the Notice proper, to determine that the defendant was actually not prejudiced, by having the correct information through a police report, statement, or otherwise, (McComb). Only in the event of such a substantial compliance, can the claimant find refuge in the observation of the Courts that,

"It was not intended that such a Notice should serve to entrap the plaintiff who had a meritorious cause of action if it was sufficiently definite."

In the last analysis, a little more caution in examining the Notice before filing it will obviate the necessity of testing this substantial compliance theory with the client as a curious and interested observer.

The seventh requirement to "file in the office of the secretary of the Board, and also in the office of the General Attorney for the Authority, within six months of the accident" is mandatory. The provisions of this statute are jurisdictional and a sine qua non to a recovery. The filing of a proper statement or notice is a condition precedent to the commencement of suit and must be alleged in the complaint and proved at the trial. Failure to comply results in a dismissal of the suit.

It is obvious from an examination of the foregoing cases that the fact that all the required information may be in the files of the C.T.A. without a formal Notice is not a compliance of the Statute.

In Erford v. City of Peoria, 229 Ill. 546, the Court held that, "Statutes of this character are mandatory and the giving of the Notice is a condition precedent to the right to bring such suit and the giving of the notice must be proved and averred by the plaintiff, to avoid a dismissal of his suit."

In the case of Walters v. City of Iowa, 240 Ill. 259, the court said,

"The City has no power to waive the Notice.—The Statute expressly declares that if the required notice is not given, any suit should be dismissed and the plaintiff barred from further suing."

Also, Donaldson v. Village of Dietrich, 247 Ill. 522.

In the recent case of Hayes v. C.T.A., 340 Ill. App. 375, the court said,

"The production of the statement of plaintiff and the report of the physician, or either, would not aid the plaintiff in proving that she, her agent or attorney filed in the office of the secretary of the board and also in the office of the general attorney for the Authority a statement in writing signed by herself, her agent or attorney giving the requisite information. It is a matter of common knowledge that it is the practice of defendant to investigate the available facts following an accident. This, however, does not relieve a claimant from complying with the provisions of sec. 41 of the Transit Authority Act. Giving a statement to an investigator does not fulfill the requirement of sec. 41 that the claimant, her agent or attorney shall file a statement with the secretary of the board and with the general attorney of the Authority. The fact that the statement and report are a "part of the regular files" of defendant and "available" to the secretary of the board and the general attorney of the Authority, does not establish compliance with sec. 41."

This requirement is not fulfilled by *mailing* the Notice to the C.T.A. Filing in the office of the secretary of the board and in the office of the general attorney is the requirement. In Lutsch v. City of Chicago, 318 Ill. App. 156, the court said, "And we believe the meaning here is synonymous with, and used in the identical sense as the word 'serve.'" By "filing," the courts have construed *personal* service on the offices to which the Statute refers. In the case of Schoeler v.

(Continued on page 17)

Lawyer's LIBRARY

New Books

American Jewish Congress and National Association for the Advancement of Colored People. *Civil rights in the United States in 1950.* N. Y., The Authors, 1951. 96 p. $0.25.

Blanshard, Paul. *Communism, democracy, and Catholic power.* Boston, Beacon Press, 1951. 340 p. $3.50.

Bornstein, Joseph. *The politics of murder.* New York, Sloane Associates, 1950. 295 p. $4.00.

Dressler, David. *Probation and parole.* Columbia University Press, 1951. 245 p. $3.25.

Graves, W. Brooke. *Fair employment practice legislation in the United States, federal-state-municipal.* Library of Congress. Legislative Reference Service. 1951. 239 p. $1.65. (Public Affairs Bulletin No. 93)

Hemphill, Victor. *Illinois jury instructions.* Chicago, Burdette Smith Co., 1951. 2 vols. $30.00.

Hopkins, Vincent. *Dred Scott's case.* Fordham University Press, 1951. 192 p. $4.00.

Kefauver Committee report on organized crime. New York, Didier, 1951. 206 p. Paper $1.50.

Lasser, J. K. *What you should know about estate and gift taxes.* New York, Holt, 1951. 186 p. $2.95.

Mathews, R. E., ed. *Labor law, cases and materials.* Temp. ed. Boston, Little, Brown, 1950. 2 vols. $7.50.

Michigan University. *Bureau of Government. A manual of village government in Michigan,* by C. R. Tharp. University of Michigan Press, 1951. 115 p. $2.25. (Loose-leaf)

Pantzer, Kurt F. & O'Neal, F. Hodge. *The drafting of corporate charters and by-laws.* Philadelphia, Committee on Continuing Legal Education, 1951. 174 p. $2.00.

Pevsner, Isaiah. *Israel commercial law (including taxes and fees).* Jerusalem, Jewish Agency for Palestine, Economic Department, 1950. 80 p.

Scott, G. Ryley. *The history of capital punishment.* London, Torchstream Books, 1951. 402 p. 21s.

Scott, Walter R. *Fingerprint mechanics: fingerprints from crime scene to courtroom.* Springfield, Illinois, Charles C. Thomas, 1951. 378 p. $8.50.

Tannenbaum, Frank. *A philosophy of labor.* New York, Knopf, 1951. 199 p. $2.75.

Twinem, Lynn K. *Bankruptcy guide for personal finance companies.* New York, The Author, 1950. 298, 105, 111 p. $4.00.

Van de Woestyne, Royal Stewart, ed. *Some problems in federal taxation.* University of Chicago Press, 1950. 172 p. Paper $2.00.

Weyl, Nathaniel. *The battle against disloyalty.* New York, Crowell, 1951. 378 p. $3.75.

Wilson, Donald P. *My six convicts: a psychologist's three years in Fort Leavenworth* New York, Rinehart, 1951. 369 p. $3.50.

APPLICATIONS FOR MEMBERSHIP

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LEGAL RESEARCH

The John Simon Guggenheim Memorial Foundation announced recently another large grant—$568,000—to one hundred and fifty-four American and Canadian scholars, scientists, and writers. This foundation has been established in 1925 by the late Senator Simon Guggenheim of Colorado. Since its establishment the foundation has awarded 2,471 fellowships with stipends amounting to more than $5,900,000. The awards are granted to distinguished scholars and creative artists of demonstrated high ability. Citizens and permanent residents of all the American republics and the Phillippines are eligible without regard to race, color or creed.

Projects of particular interest to members of the legal profession for which awards have been granted and the names of the recipients are as follows:

Dr. Alexander Brady, professor of political science, University of Toronto, Ontario: A study of the democratization of the British state in the twentieth century and effects of the democratic process upon the traditional British political system.

George Hathaway Dession, professor of law, Yale University: Studies leading toward a book on "The Techinque of Public Order."

Dr. Albert A. Ehrenzweig, professor of law, University of California, Berkeley: Legal questions concerning losses caused by hazardous enterprise.

Dr. Carl J. Friedrich, professor of government, Harvard University: Studies of the conflict between the concept of civil liberties and the doctrine of "reason of state."

Dr. Samuel Konefsky, assistant professor of political science, Brooklyn College, will continue on a second Guggenheim fellowship, his studies leading to a book on the Supreme Court, to be entitled "Holmes and Brandeis: A Study in the Influence of Ideas."

Hal Lehrman, writer, and lecturer, New York City, will study the internal problems of the State of Israel.

Dr. Richard A. Musgrave, professor of economics, University of Michigan: Theory of public finance.

Mrs. Alice Fleenor Sturgis, of Piedmont, Calif., author of books on parliamentary law, will study the structure and operation of some of the larger national organizations of the United States.

William Rulon Williamson, Washington actuary: Research toward preparation of a book on taxation and social budgeting. Mr. Williamson was actuarial consultant to the Social Security Board, 1936-47.

Dr. Kimball Young, professor of sociology, Northwestern University, Evanston, Ill., will make a study of the rise and functioning of plural marriage among the Mormons. Dr. Young is a grandson of Brigham Young, nineteenth-century Mormon leader.

A Note from Senator Korshak

Editor, The Decalogue Journal

Dear Sir:

Because we feel that the laws relating to the narcotics evil are not sufficiently severe, Senator C. C. Wimbish (Third Senatorial District) and I introduced during the last session of the State Senate a bill (Senate Bill No. 80) amending the laws to increase the penalties which may be imposed upon dope peddlers who prey upon our children.

We proposed that the penalty for selling narcotics to minors be increased from the present maximum of one year for a first offense and five years for a second offense, to life imprisonment. In this filthy trade we cannot afford to discriminate between first and second offenders. In addition, this bill increases the penalties for narcotics manufacturers to not less than ten or more than twenty years imprisonment.

In the rush of the close of the Legislative session this bill died along with many others. We shall do all we can at the next session to enact the laws necessary to rid our community of this plague. This will require the cooperation of every parent in the state. Without their help our law enforcement officials are handcuffed and unable to act.

Marshall Korshak
Fifth Senatorial District

BOOK REVIEWS

Civil Rights in the United States, by Alison Reppy. 1951. Central Book Co., New York. 298 pp. $4.50.

Reviewed by ELMER GERTZ

This is an intensive study of civil rights cases in the United States, with particular emphasis on the years 1948 and 1949 and part of 1950. The author is dean of the New York Law School. He is, also, an athlete, coach, soldier, teacher, author and editor. So his book has a simplicity and clarity making it understandable to laymen as well as lawyers. It is significant, too, that the book is sponsored by a distinguished group of lawyers, headed by Nathaniel Phillips, chairman of the Committee on Civil Rights of the New York County Lawyers' Association. It is a pity that it does not have a wide audience in this period of hysteria and hate.

The book deals with such diverse subjects as the Atomic Energy Commission, the peacetime draft, the movement for reform of courts-martial, the civilian and national defense, conscientious objectors, the veterans' preference act, the rights of war criminals, civil rights proposals as they affect the criminal code, communism and the constitution, the investigatory powers of Congress, the President's loyalty order, the Smith Act, the Four Freedoms in their widest possible application, group discrimination, labor, aliens, and a wide survey of the broad field known as civil rights. Here is excellent commentary on the statutes, the cases, the law review articles, and everything which serves to make one understand the multifold problems and the efforts made to cope with them.

"During the past biennial period, the world-wide battle to preserve and extend civil liberty was not fought upon the battlefields nor in the courts," Dean Reppy says at the outset, "but for the most part it was waged on the diplomatic front, in legislative halls, in the field of executive administration, and on the political platform."

Appropriately, he concludes:

"In retrospect it appears that the most significant development of the period under survey consists in the transfer of labor's struggle to advance its cause from the courts and legislature to the political arena, as appears from the *Giboney* case. A somewhat similar development seems to be taking place in the field of group discrimination, particularly as applied to Negroes. While they have been partially successful in the courts, as evidenced by those Supreme Court cases vindicating their claims to the right to attend state university law schools, they now appear to be reenforcing their fight for full recognition of their civil rights in the field of practical politics, and at a time when, as Dr. Bunche recently so aptly said, the American Negro soldier is valiantly fighting to preserve the civil rights of the South Koreans, which rights he has never been permitted to fully enjoy in his own land.

"However this may be, if the grist of the mill in the field of civil rights covering the contemporary scene is any criterion of the future, we may be certain that the immediate succeeding years, clouded as they are by the overtones of a world conflict, will each produce for discussion their share of new problems involving the maintenance and the advancement of our civil liberties."

There were victories won, despite the difficulties; there were defeats suffered, despite the promises. The Declaration of Human Rights, the convention on genocide, the conventions on freedom of international communications by press, radio and newsreel, the Report of the President's Committee on Civil Rights, the Report of the President's Committee on Higher Education, the Supreme Court decisions barring enforcement of restrictive covenants aimed at racial minorities, the *McCollum* decision, the various decisions holding that the state must provide equal facilities for Negroes seeking a legal education, the outlawing of Michigan's one-man grand jury, these certainly were victories in the never ending battle for civil rights. But the defeats were, perhaps, as significant; they included the excesses of the various legislative committees, the purges of government employees, deportations and refusals to issue passports, the Mundt-Nixon Bill (which later passed as the McCarran Act), the Supreme Court's refusal to hear various important civil rights cases.

Those of us who are incurable optimists will see in this book evidence that, despite all temporary set-backs, we are heading for equality and fairness of treatment for all persons, regardless of differences. Those of us who are thoroughgoing pessimists or cynics will see humanity as heading rapidly to a new dark age, the moments of light being only to make the coming darkness deeper. The realistic truth is, as Jefferson and others knew, that only eternal vigilance assures us the continuance of our heritage of liberty. The great value of this book is that it seasons our realism with the factual salt and pepper which only the cases can supply. The most brilliant generalization about civil liberties is almost meaningless until it appears under the signature of the President of the United States or is adopted by a majority of the nine men who are our judicial rulers.

Manual of Village Government in Michigan, by Claude R. Tharp. University of Michigan Press, Ann Arbor, Michigan. 118 pp. $2.25.

Reviewed by HENRY X. DIETCH
Member Dietch is Mayor of the Village Park Forest, a suburb of Chicago.

The great need of Illinois village officials for a simple and concise reference work on Village Government is ably accomplished by this manual for village officials in Michigan. Here is made available in a single reference work a concise and comprehensive description of village government in Michigan. The author, a research associate in the Bureau of Government, Institute of Public Administration of the University of Michigan, has performed an outstanding job and that in an easily readable style.

The manual contains a brief account of the development of the different types and classes of village government in Michigan and compares them with those existing in other States. The author analyses the laws under which each type or class of village is controlled referring to such categories as organizational procedure, personnel, powers and duties of officers, boards, commissions and other agencies and then devotes a section to the important question of finance.

It appears that under the Michigan laws, villages may be organized under the General Village Act or may be organized as Home Rule Villages. The Michigan Home Rule Village Act enacted in 1909 could well be copied by the Illinois legislature. Certainly with the increasing complexity of local government and the necessity of securing adequate financing, Home Rule may be the answer to many of the problems. It would allow that flexibility which goes with decentralization and with the necessity of meeting local conditions. Especially is this true in a state where there exist wide discrepancies between the industrial areas and the agricultural areas with special problems confronting each.

Now that the Illinois legislature has permitted cities and villages in Illinois (except the City of Chicago) the right to decide whether or not to have a City Manager form of government, the next logical step might well be a modern form of Home Rule.

Thus much can be learned from this manual.

My Son, The Lawyer, by Henry Denker. Thomas Y. Crowell Co. 278 pp. $3.00.

Reviewed by BENJAMIN WEINTROUB

David Brown, son of New York East Side Jewish parents, a boy with an aptitude for learning is early directed by his mother toward a career beyond the horizons of his immediate environment. Mother chooses the law as that which best epitomizes her American concept of true worldly success. Herself an illiterate in the English language she overcomes the opposition of her husband and other members of the family to afford David the means to go through law school. Though reluctant about a calling chosen for him by his strong willed mother, much concerned with a love affair of his own, David Brown nevertheless completes years of study in a New York university at the head of his entire class and is admitted to the Bar. Despite his brilliance the fact that he is a Jew prevents his finding, as a beginner, an opening in a reputable law office. Because, under the New York State Bar Examiner's Board requirements he must spend a year practicing before final admission he accepts apprenticeship in an office of a shyster.

His mother, nevertheless, relentlessly persists in urging her son to overcome all difficulties until such day as he shall become a money maker, highly regarded in the profession. She is suddenly stricken with an incurable disease and David, a person of high integrity and principles, finds that in order to afford his mother a chance to live, an expensive operation is necessary, nurses, hospital bills, etc. He is forced to do something drastic to afford his mother the care needed to save her —against the advice of a doctor who deems his mother's condition such that an operation is hopeless. David, now a practitioner, on his own, obtains the needed means as a "fixer" in the liquor racket. He is exposed, prosecuted, and disbarred. His mother dies shortly after, and the former lawyer faces the future as a budding writer of fiction.

My Son, The Lawyer is a racy story but with the possible exception of the mother, whose ruthlessness and devotion to a son's career is etched in the readers mind, little of striking significance emerges from this melodrama.

. . . The stern hand of fate has scourged us to an elevation where we can see the everlasting things that matter for a nation—the great peaks we had forgotten, of Honor, Duty, Patriotism and clad in glittering white, the pinnacles of Sacrifice, pointing like a rugged peak to Heaven. We shall descend into the valley again, but as long as the men and women of this generation last, they will carry in their hearts the image of these mighty peaks, whose foundations are not shaken, though Europe rock and sway in the convulsions of a great war.

—LLOYD GEORGE

More Honors for Decalogue Award Merit Winners

Three Decalogue Society of Lawyers recipients of Annual Merit Awards were honored recently:

Bartley C. Crum (Award, 1946) lawyer, received an honorary Doctorate of Hebrew Letters from the Hebrew Union College, Cincinnati.

Dr. Percy L. Julian (Award, 1950) scientist, was accorded an honorary degree in science from Howard University.

Leo A. Lerner (Award, 1945) editor and civic leader, received the Herrick Award for his outstanding editorials which "best describe Democracy, Americanism, and Good Citizenship." The National Editorial Association which bestows annually the Herrick Award comprises 5,200 members among daily and weekly newspapers in the United States.

Bishop Bernard J. Sheil

Bishop Bernard J. Sheil, (Award, 1948) clergyman and noted philanthropic and communal leader, in a recent appearance at a public meeting in behalf of the Combined Jewish Appeal pledged twenty-four hundred dollars from his salary, payable in one year, in sympathy and in approval of the purposes of the campaign to help Israel and world's stricken Jewry.

SECTARIAN V. SECULAR EDUCATION

THE N. Y. STATE COURT OF APPEALS ruled that sectarian schools must meet the State's standards and that a sectarian education could not be substituted for the required secular education unless it met the minimum requirements of the latter. The action arose from a case in which three Jewish fathers in Brooklyn were convicted last September for sending their sons to a small religious school not registered with nor recognized by the Jewish Education Committee of New York. The three fathers contended that systematic secular education for their children was prohibited under Jewish law.

—Congress Weekly

Federal Practice Guide

A recent issue of the American Bar Association Journal contains a highly complimentary review of *Federal Practice Guide* by Harry G. Fins, member of our Board of Managers. The reviewer thus summarizes his findings:

> This good book has had the benefit of a long list of experts who read the manuscript before publication and offered suggestions. It is a "Guide" written by one with encyclopedic knowledge for the practicing lawyer who wants the shortest and quickest route to questions within this field of law. In writing this book, Mr. Fins has increased the already heavy debt of gratitude owed him by the profession for his labors in the field of state and federal procedure.

GOOD LUCK!

Members Bernard Epton, Saul Epton, and Irving Abrams will hold "Open House" for friends in the profession, at their new offices, at 141 W. Jackson Blvd., Board of Trade Building, on September 7.

Edward Scott and Edward McCarthy are also members of this firm.

Advice to a Young Lawyer

Be brief, be pointed; let your matter stand
Lucid in order, solid, and at hand;
Spend not your words on trifles, but condense;
Strike with the mass of thought, not drops of sense;
Press to the close with vigor, once begun,
And leave (how hard the task!) —leave off when done.
Who draws a labored length of reasoning out
Puts straws in line of winds to whirl about;
Who drawls a tedious tale of learning o'er
Counts but the sands on ocean's boundless shore.
Victory in law is gained, as battles fought,
Not by the numbers, but the forces brought.

LYRICS OF THE LAW
from The Green Bag, Boston, 1889

Professional Education

Harry A. Iseberg, Chairman of the Decalogue Professional Education Committee announces that Harry G. Fins, member of our Board of Managers, will be the first speaker on the committee's program Friday, September 21, at a luncheon at the Covenant Club. Mr. Fins' subject will be:

Illinois Legislative Enactments in 1951 Affecting the Practice of Law

Chairman Iseberg states that the complete program for this year's committee's activities, subjects for lectures, dates and the names of the speakers will be announced in the next issue of The Decalogue Journal.

FOUNDATION FUND

Harry D. Koenig, Solomon Jesmer, and Benjamin Weintroub were reelected by our Board of Managers, for a tenth (one year) consecutive term as Trustees of the Decalogue Foundation Fund.

THE LAWYER

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which would drive such men out of it."

ABRAHAM LINCOLN

HERO

Key West, Florida newspapers, reports columnist Irv. Kupcinet of the Chicago Sun-Times, carried a story recently that member Ben W. Gleason saved the life of a two year old boy by administering respiration after the youngster was pulled out of the ocean, half drowned.

JOBS FOR LAW SCHOOL GRADUATES

Michael Levin, Chairman of the Placement and Employment Committee of The Decalogue Society of Lawyers, is in receipt of requests for employment from members, recent Law School graduates. If there is an opening in your own law office or if you know of one elsewhere, please consult Michael Levin, 7 S. Dearborn St., telephone, ANdover 3-3186.

ELMER GERTZ

Member of our Board of Managers and Chairman of our Civic Affairs Committee, Elmer Gertz, has been elected a Director of The Friends of The Chicago Public Library.

Personal Injury Claims

(Continued from page 11)

City of Rockford, 160 Ill. App. 217, where there was no evidence that the attorney "left the notice or a copy in the office of the city clerk," the court held,

> "There was no evidence offered that a notice was filed with the city attorney. In Hamilton v. Beardslee, 51 Ill. 478, it was held that to constitute the filing of a paper in a cause, it must be placed in the hands and under the control of the clerk, must pass into his exclusive custody and remain within his power. And this holding was cited as authority in Coles v. Terrell, 162 Ill. 167, 'and we see no reason why this rule does not control the filing of the notice provided for by chapter 70. We therefore hold that the appellee did not file with the city clerk, the notice required by the statute.'"

And in McCarthy v. City of Chicago, 312 Ill. App. 268, the court held the notice was invalid where it was not filed with the city clerk, although all the information was in the hands of the clerk. The court said on pg. 280,

> "knowledge of the facts by the city will not take the place of a notice." And in answering the complaint of hardship to the claimant, the court said, "This argument should be addressed to the legislature and not to the courts."

Finally, it is obvious that after the six months following the date of the accident, no amendment of the essential elements of the Notice or new filing will have any legal effect.

It would appear that diligence and careful inspection of the Notice are of prime importance in the handling of these claims. Failure to observe them invites the consequences of a serious malpractice suit against the lawyer.

CHILEAN CONSUL

Solomon Jesmer, member of our Board of Managers and long active in communal affairs in this city has been appointed by the government of The Republic of Chile as its consul in the United States, Middle West area; the territory comprises eleven states.

MORRIS K. LEVINSON

Past President, Morris K. Levinson was elected a Vice President of the City Club of Chicago. Levinson is, also, Editor of the City Club Bulletin.

PHILIP H. MITCHELL

Master in Chancery, Philip H. Mitchell was elected First Vice-President of the B'nai B'rith, District No. 6.

AIR FLEET LEGAL OFFICER

Decalogue Member, Captain William W. Kass USMC, has been appointed Legal Officer for General Wallace's Headquarters, Air Fleet, Marine Force Pacific.

WE MOURN

The Decalogue Society of Lawyers mourns with its Past President, Roy I. Levinson and his family, the passing of his beloved wife Dinah Levinson, an active worker in welfare organizations in this city, who died suddenly in Chicago, May 23, 1951.

REFEREES IN BANKRUPTCY CONFERENCE

President Archie H. Cohen has recently returned from a trip East in the course of which he participated in the Twenty Fifth Annual Conference of The National Association of Referees in Bankruptcy. The meeting was held August 20-22 in Detroit, Michigan. Among the principal speakers at the Conference were: Henry H. Heimann, Executive Manager, National Association of Credit Men; Edwin L. Covey, Chief of the Division of Bankruptcy, Administrative Office of the United States Courts, and, Henry P. Chandler, Director, Administrative Office of the United States Courts. Maurice F. Ellison is President of the Association.

President Cohen is the Editor of the *Journal of the National Association of Referees in Bankruptcy.*

"It is a sad reflection on the state of our civilization that in our age it was necessary to establish special organizations to fight for the elementary rights of citizenship of any group."

—LAWRENCE A. KIMPTON, *Chancellor, University of Chicago in an address in behalf of Anti-Defamation League Fund Drive.*

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Inter-American Bar Association Conference

By JACK EDWARD DWORK

Mr. Dwork is Past President of The Decalogue Society of Lawyers.

The Seventh Annual Conference of the Inter-American Bar Association, of which The Decalogue Society of Lawyers has long been a member, will be held this year at Montevideo, Uruguay from November 22nd to December 3rd, 1951. Any member of this society and his family may attend the Conference. Credentials appointing him or her as an authorized delegate of The Decalogue Society will be issued upon request.

Topics of vital interest to the legal profession are on the agenda of the Conference. Member organizations, through their representatives will discuss the draft of a Uniform Code of Professional Ethics (Resolution adopted at the Detroit Conference in 1949). For possible adoption before the Conference is, also, consideration of a resolution of a form of oath for lawyers. Among themes before the gathering are Public International Law; Civil, Constitutional and Municipal Law; Civil and Commercial Procedure; Social and Economic Law and other subjects of deep concern to lawyers.

For those who desire an unusual vacation and can afford the expense, presence at this conference is heartily recommended. For example, on November 22nd, the delegates will be presented to Senor Andres Martinez Trueba, the distinguished statesman who has recently become president of Uruguay. The opening session of the Conference will take place that evening in the Palacio Legislativo (Uruguayan Congress). The delegates will be entertained during the course of the Conference at a concert at the Official Theatre and at many festive social affairs. After the Conference most of the delegates will go to Buenos Aires (55 minutes travel from Montevideo) where, on December 4th and 5th, they will be feted by Argentine lawyers at functions now being arranged.

The Pan American World Airways has arranged trips from November 10th until December 13th which covers Miami, Port of Spain, Rio de Janeiro, Montevideo, Buenos Aires, Sao Paulo, Caracas and back to Miami. The Moore-McCormack Lines are preparing a trip on the S.S. Argentina, to leave November 1st from New York, covering Port of Spain, Rio de Janeiro, Santos, Sao Paulo, Montevideo, Buenos Aires returning to New York on December 24th.

I have attended in 1945, the Fourth Annual Conference held at Santiago, Chile. In the course of my travels I visited all countries and cities herein mentioned. If further interested please consult me at 77 West Washington Street, telephone, FInancial 6-4747.